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# **DRAFT REPORT**

on the implementation of the Return Directive  
(2019/2208(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Tineke Strik

## CONTENTS

	<b>Page</b>
EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS .....	3
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	10

## EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS

This Report includes an evaluation of the implementation of the Return Directive (2008/115/EC), which aims at promoting an effective return policy in line with adequate procedural safeguards and fundamental rights. The objective of the Directive thus contains both protective and enforcement oriented elements.

Under Article 19 of the Directive, the Commission is to report on its application every three years, starting from 2013. It released its only evaluation report in 2013, based on a meta-study of return policies in 31 states. As part of its 2014 Communication on EU return policy, the Commission concluded that the Directive had contributed to more legal certainty by means of procedural safeguards and reduced the possibilities for Member States to criminalise irregular stay. The Commission concluded there was still scope for improvement in the practical implementation of the Directive, ensuring respect for fundamental rights standards and effectiveness.

The Commission highlighted that the *‘main reasons for non-return relate to practical problems in the identification of returnees and in obtaining the necessary documentation from non-EU authorities’* and thus considered the external dimension of return policy a key aspect in ensuring its effectiveness. These conclusions supported the initial decision of the Commission not to initiate a new recast of the Return Directive, but instead to work on its better implementation and to intensify efforts to cooperate with countries of origin on readmission of their citizens.

In its 2017 Recommendation on making returns more effective, the Commission urged Member States to harmonise their approaches, with a focus on increasing return rates. Apart from confirming some obligations, the Commission recommended to diminish certain safeguards, such as the right to appeal and to make use of the longer detention periods. There has been no published evaluation of the effect of these recommendations.

Despite the Commission’s commitment, as part of its 2014 Communication, to table legislative amendments to the 2008 Return Directive only after a thorough evaluation of its implementation, the Commission released a proposal for a recast of the Return Directive in 2018. As no impact assessment had been conducted, the European Parliament released a substitute impact assessment in March 2019.

This Report, highlighting several gaps in the implementation of the Return Directive, is not intended to substitute the still overdue fully-fledged implementation assessment of the Commission. It calls on Member States to ensure compliance with the Return Directive and on the Commission to ensure timely and proper monitoring and support for its implementation, and to enforce compliance if necessary.

The Report, based on the 2020 EPRS European Assessment providing an evaluation of the implementation of the Return Directive and of the external dimension of the Return Directive, highlights specific aspects concerning the implementation of the Directive. Your Rapporteur will table further amendments to the initial draft Report, in order to better highlight and give careful consideration to the identified implementation gaps as listed below.

### *Scope*

The study shows that Member States make use of the possibility offered in Article 2(2)(a) not to apply the Directive in “border cases”, by creating parallel regimes, where procedures falling outside the scope of the Directive offer less safeguards compared to the regular return procedure, for instance no voluntary return term, no suspensive effect of an appeal and less restrictions on the length of detention. This lower level of protection gives serious reasons for concern, as **the fact that border situations may remain outside the scope of the Directive also enhances the risks of push backs and refoulement.**

The Directive obliges Member States to issue a return decision to a person staying irregularly on their territory. According to Eurostat, Member States issued over 490.000 return decisions in 2019, of which 85% were issued by the ten Member States under the current study. These figures are less reliable than they seem, due to the divergent practices. In some Member States, migrants are issued with a return decision more than once, children are not issued a decision separately, and refusals at the border are excluded.

The Directive does not include a non-refoulement exception in relation to Member States’ obligation to issue a return decision for any person in an irregular situation. As a result, the risk of refoulement is infrequently assessed ex officio before starting a return procedure. This protection gap is even more concerning in the absence of automatic suspensive effect of an appeal, which in turn leads to a higher administrative burden due to a high number of requests for an interim measure.

Your Rapporteur considers that it is key to ensure a proper **assessment of the risk of refoulement prior to the issuance of a return decision.** This already takes place in Sweden and France.

Although unaccompanied minors are rarely returned, most Member States do not officially ban their return. Their being subject to a return procedure adds vulnerability to their situation, due to the lack of safeguards and legal certainty.

### *Procedural safeguards*

Persons who are subjected to a return decision have different backgrounds. They can be rejected asylum seekers, persons who entered the territory irregularly, overstayers, transmigrants or migrants who lost their residence rights, for instance as a worker, student or family member. Their circumstances may require a humanitarian approach. In most Member States there is the **possibility to grant a residence permit** as referred to in Article 6(4) of the Directive. It is positive to see that in some states, such as the Netherlands, Belgium and Poland, this can follow from an ex officio assessment after a refusal.

There are significant national differences in the **right to appeal**, especially regarding the type of appeal body and the appeal time-limits. As the Directive is silent on this, Member States have established different time-limits. Where in some cases time-limits are similar to regular administrative procedures, 30 days, in other situations this limit is halved or even limited to a few days, in which it is virtually very difficult or impossible to lodge a claim.

The granting of automatic suspensive effect also varies across Member States. Although automatic suspension offers the best protection, most Member States require a request from the returnee. In Belgium and Spain, this is reportedly rarely granted by the court.

Especially in systems with short appeal time-limits and the need to request for a suspensive effect of the appeal, proper and accessible **information and legal aid** is key for the right to an effective remedy.

### *Voluntary departure and voluntary return*

The principle of **proportionality** must be observed throughout all the stages of the return procedure, including the stage relating to the return decision, in the context of which the Member State concerned must rule on the granting of a period for voluntary departure. As **priority is to be given to voluntary compliance** with the obligation resulting from the return decision, the Directive obliges Member States to provide an appropriate period for voluntary departure of between 7 and 30 days. **Shortening or refusing** the period for voluntary departure is only justified as a **measure of last resort**, if the measures mentioned in Article 7(3) are not sufficient. However, only Belgium requires non-compliance with these measures for shortening or refusing the period of voluntary departure.

Evidence also shows that voluntary return is cost-effective and easier to organize, also in terms of cooperation of destination countries. Despite the fact that a voluntary departure term is the rule, as confirmed in national legislation in most Member States, the four grounds for exception are applied on a large scale. In Italy, the person has to request a voluntary departure period for this to be applied. Some Member States use grounds for shortening or refusing the voluntary return period other than the grounds exhaustively listed in Article 7(4). For instance, Germany does not grant a period to migrants who are in detention, Spain applies the exception if removal is hindered, the Netherlands if the asylum request is rejected on the basis of the safe country of origin concept, and Sweden if a person is to be expelled following the commitment of a crime.

As one of the grounds for exception, **the risk of absconding** needs to be established on the basis of an **individual assessment** and in line with the principle of proportionality, also if objective criteria are laid down in legislation.

Statistics on the percentage of departure being voluntary show significant varieties between the Member States: from 96% in Poland to 7% in Spain and Italy. Germany and the Netherlands have reported not being able to collect data of non-assisted voluntary returns, which is remarkable in the light of the information provided by other Member States. According to Frontex, almost half of the departures are voluntary.

According to recital 10 of the Directive, Member States should invest in **‘assisted voluntary return’ programmes**. Although all examined states have those programmes in place, there is a wide variety in scope and size of these programmes and in the number of assisted returns. In Belgium, a successful methodology is voluntary return counselling, as part of an individualised and permanent social guidance during migrant’s stay in a reception facility. The Commission should invest in coordinating and supporting AVR programmes.

### *Entry bans*

Article 11 of the Directive obliges Member States to impose an entry ban if no period for voluntary departure has been granted or if the returnee has not departed within the term of voluntary return. In all other cases Member States may impose an entry ban. The policies regarding entry bans thus depend on the way Member States deal with the voluntary departure

term. As Article 7(4) is often applied in an automatic way, and as the voluntary departure period is often insufficient to organise the departure, **many returnees are automatically subject to an entry ban**. Due to the **different interpretations of a risk of absconding**, the scope of the mandatory imposition of an entry ban may vary considerably between the countries. The legislation and practice in Belgium, Bulgaria, France, the Netherlands and Sweden provides for an automatic entry ban if the term for voluntary departure was not granted or respected by the returnee and in other cases, the imposition is optional. In Germany, Spain, Italy, Poland and Bulgaria however, legislation or practice provides for an automatic imposition of entry bans in all cases, including cases in which the returnee has left during the voluntary departure period. Also in the Netherlands, migrants with a voluntary departure term can be issued with an entry ban before the term is expired. This raises questions on the purpose and effectiveness of imposing an entry ban, as it can have a **discouraging effect if imposed at an early stage**. Why leave the territory in time on a voluntary basis if that is not rewarded with the possibility to re-enter? This approach is also at odds with the administrative and non-punitive approach taken in the Directive.

The **length of an entry ban** has to be decided on an individual basis, taking into account all relevant circumstances and interests. National practices on the length of entry bans are **far from harmonised**, despite the fact that they have an effect in other Member States as well. The obligation to take into account the individual circumstances, humanitarian reasons and the right to family life should be strengthened in order to protect the proportionality principle and fundamental rights.

#### ***Detention and definition of risk of absconding***

The Directive provides that detention must be prescribed by law and be necessary, reasonable and proportional to the objectives to be achieved and it should last for the shortest time possible. Your Rapporteur stresses that, in line with the principles of necessity and proportionality and with the preventive nature of administrative detention established within the Directive, pre-removal administrative detention could only be justified by a combination of a well-established risk of absconding and a proportionality test.

National legislation transposing the definition of “risk of absconding” significantly differs, and while several Member States have long lists of criteria which justify finding a risk of absconding (Belgium has 11, France 8, Germany 7, The Netherlands 19), other Member States (Bulgaria, Greece, Poland) do not enumerate the criteria in an exhaustive manner. A broad legal basis for detention allows **detention to be imposed in a systematic manner**, while individual circumstances are marginally assessed. National practices highlighted in this context also confirm previous studies that most returns take place in the first few weeks and that **longer detention hardly has an added value**.

The proportionality test requires that returnees may only be detained where other less coercive measures cannot be applied. However, the study shows that, despite the existence in the legislation of most Member States of **alternatives to detention**, in practice, very few viable alternatives to detention are made available and applied by Member States.

Your Rapporteur is particularly concerned of the situation of children and families in detention and stresses that the **detention of children** because of their or their parents’ residence status constitutes a direct violation of the UN Convention on the Rights of the

Child, as detention can **never be justified as in a child's best interests**.

### *External dimension*

In its 2016 Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration, the Commission recognised that cooperation with third countries is essential in ensuring effective and sustainable returns. Since the adoption of this Communication, several informal arrangements have been concluded with third countries, including Gambia, Bangladesh, Turkey, Ethiopia, Afghanistan, Guinea and Ivory Coast. The Rapporteur regrets that such informal deals are concluded in the complete absence of duly parliamentary scrutiny and democratic and judicial oversight that according to the Treaties the conclusion of formal readmission agreements would warrant.

With the informalisation of cooperation with third countries in the field of migration, including with transit countries, also came an increased emphasis on conditionality in terms of return and readmission. The Rapporteur is concerned that funding earmarked for development cooperation is increasingly being redirected away from development and poverty eradication goals.

In order to get a better understanding of the compliance of the Return Directive with fundamental rights obligations, any assessment of the effectiveness of returns should not only include data on forced returns in terms of travel, but also look at the circumstances and fate of returned persons after they have arrived in their destination country. The Commission has to ensure that this monitoring is effective, meaning that it is exercised by monitoring bodies with sufficient capacity and level of independence. In the case of unaccompanied minors, Member States are obliged to conduct post-return monitoring to fully fulfil the conditions laid down in Article 10 of the Directive. Save the Children recently conducted interviews with children who were returned to Afghanistan and concluded that nearly three-quarters of the children did not feel safe during the returns process. On arrival, the children received little or no support, and only three had a specific reintegration plan. The Rapporteur is deeply worried about these results and urges Member States to conduct better post-return monitoring and publish the results of this monitoring in a transparent manner.

### *Conclusions*

With a view to the dual objective of the Return Directive, notably promoting effective returns and ensuring that returns comply with fundamental rights and procedural safeguards, this Report shows that the Directive allows for and supports effective returns, but that most factors impeding effective return are absent in the current discourse, as the effectiveness is mainly stressed and understood as return rate.

- **Promoting effective returns**

The Report highlights that a number of measures laid down in the Directive will not directly increase the number of people returned, and may even have a counterproductive effect. First, the option that an entry ban can be imposed alongside voluntary return may reduce the incentive of the returnee to actually leave the Member State. Second, short periods of time for voluntary departure may preclude departure altogether, as the necessary time needed for preparing the return often exceeds the voluntary departure term. This is especially a risk with the frequent application of the possibility to shorten or refuse the voluntary term. In that

context, Member States should be reminded that the proportionality principle and the structure of the Directive require that the criteria of Article 7(4) need to be applied strictly and assessed on a case-by-case basis, and that shortening and reducing the term is a measure of last resort. Third, the maximum period of immigration detention does not seem to increase the return rate. National practices confirm previous studies that most returns take place in the first few weeks and that longer detention doesn't have an added value. Here the counter-productivity comes in, as a long duration of detention affects the fundamental rights of returnees. This is especially concerning with regard to the practice of a more or less automatic application of the detention measure in many Member States instead of applying it as a real measure of last resort. Although the Directive requires that the return process is handled with due diligence, the possibility of such long detention periods does not offer any incentive to do so. In order to avoid administrative or judicial review of the detention, Member States tend to order detention for the maximum period set out in the legislation. Shorter time periods would increase oversight of detention and may speed up the return process as well.

- **Ensuring fundamental rights**

The Report highlights that the Directive has a positive influence on certain safeguards, but that the optional clauses and frequent derogations significantly reduce that effect. This is for instance the case with the optional clause to leave the border situation outside of the scope of the Directive. As migrants at the border are often in a vulnerable situation and the non-refoulement principle may be at stake, Member States should be urged to apply the Directive to border situations as well. Furthermore, the broad interpretation and application of the definition 'risk of absconding' undermines the guarantee of an individual assessment where all circumstances and interests are taken into account. Access to legal aid and interpreters is hampered by the lack of capacity and funding. Lack of funding also affects effective post-return monitoring in several Member States. The Commission should play a key role in ensuring that alternatives to detention are used as a proportional and effective measure to avoid absconding. In cases where return cannot be effectuated, people are often left in limbo without a tolerated status, which puts their dignity and fundamental rights at risk. This practice calls for a European solution.

Finally, despite the obligation for Member States to respect the principle of non-refoulement and to take due account of the best interests of the child and family life, implementation policies and practice show clear gaps. Although this concerns all stages of the return procedure, the detention of children, which is never in their best interests, makes this painfully visible.

- **Taking into account the external dimension**

Regarding effective returns, Member States make clear that the most important factor impeding effective returns is related to their cooperation with countries of origin. This is at odds with the most common reliance on the return rate as the primary indicator of the policy effectiveness of the Return Directive. This report underlines that an effective return policy in line with fundamental rights requires a qualitative assessment of the sustainability of returns and the reintegration of the returnee, including effective post-return monitoring. At the same time, the obstacles to return people to their country of origin, should be taken seriously through a critical assessment of migration cooperation with third countries, where conditionality and informalisation raise concerns regarding human rights, democratic and



judicial control, equality of partnerships as well as the coherence of EU's foreign policy.

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the implementation of the Return Directive (2019/2208(INI))

*The European Parliament,*

- having regard to the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948,
- having regard to the UN Convention on the Rights of the Child,
- having regard to the European Convention on Human Rights,
- having regard to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Geneva Convention), and in particular the right to non-refoulement,
- having regard to the Charter of Fundamental Rights of the European Union and in particular Articles 1, 3, 4, 6, 7, 18, 19, 20 and 47 thereof,
- having regard to the Global Compact for Safe, Orderly and Regular Migration, adopted by the UN General Assembly on 19 December 2018,
- having regard to the Twenty Guidelines on Forced Return, adopted by the Committee of Ministers of the Council of Europe on 4 May 2005,
- having regard to Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals<sup>1</sup> (‘the Return Directive’),
- having regard to the judgments of the Court of Justice of the European Union related to Directive 2008/115/EC, including Cases C-357/09 Kadzoev<sup>2</sup>, C-61/11 El Dridi<sup>3</sup>, C-534/11 Arslan<sup>4</sup>, C-146/14 Mahdi<sup>5</sup>, C-554/13 Z. Zh.<sup>6</sup>, C-47/15 Sélina Affum<sup>7</sup>, C-82/16 K.A. and Others<sup>8</sup> and C-181/16 Gnandi<sup>9</sup>,
- having regard to the judgments of the European Court of Human Rights related to Directive 2008/115/EC, including *Amie and Others v. Bulgaria* (application No 58149/08), *N.D. and N.T. v. Spain* (application Nos 8675/15 and 8697/15) and *Haghilo v. Cyprus* (application No 47920/12),
- having regard to the Commission communication of 28 March 2014 on EU Return

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<sup>1</sup> OJ L 348, 24.12.2008, p. 98.

<sup>2</sup> ECLI:EU:C:2009:741.

<sup>3</sup> ECLI:EU:C:2011:268.

<sup>4</sup> ECLI:EU:C:2013:343.

<sup>5</sup> ECLI:EU:C:2014:1320.

<sup>6</sup> ECLI:EU:C:2015:377.

<sup>7</sup> ECLI:EU:C:2016:408.

<sup>8</sup> ECLI:EU:C:2018:308.

<sup>9</sup> ECLI:EU:C:2018:465.

Policy (COM(2014)0199),

- having regard to the Commission communication of 13 May 2015 on a European Agenda on Migration (COM(2015)0240),
- having regard to the Council’s non-binding common standards of 11 May 2016 for Assisted Voluntary Return (and Reintegration) Programmes implemented by Member States,
- having regard to the Commission communication of 2 March 2017 on a more effective return policy in the European Union – a renewed Action Plan (COM(2017)0200),
- having regard to Commission Recommendation (EU) 2017/432 of 7 March 2017 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council<sup>10</sup>,
- having regard to Commission Recommendation (EU) 2017/2338 of 16 November 2017 establishing a common ‘Return Handbook’ to be used by Member States’ competent authorities when carrying out return related tasks<sup>11</sup>,
- having regard to the 2017 Synthesis Report of the European Migration Network entitled ‘The effectiveness of return in EU Member States: challenges and good practices linked to EU rules and standards’,
- having regard to the Commission communication of 14 March 2018 on adapting the common visa policy to new challenges (COM(2018)0251),
- having regard to the Commission proposal for a directive of the European Parliament and of the Council of 12 September 2018 on common standards and procedures in Member States for returning illegally staying third-country nationals (recast) (COM(2018)0634),
- having regard to the Commission communication of 4 December 2018 on managing migration in all its aspects: progress under the European agenda on migration (COM(2018)0798),
- having regard to the Commission communication of 16 April 2020 on COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement (C(2020)2516),
- having regard to its resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration<sup>12</sup>,
- having regard to its resolution of 5 April 2017 on addressing refugee and migrant movements: the role of EU External Action<sup>13</sup>,
- having regard to its position of 13 March 2019 on the proposal for a regulation of the

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<sup>10</sup> OJ L 66, 11.3.2017, p. 15.

<sup>11</sup> OJ L 339, 19.12.2017, p. 83.

<sup>12</sup> OJ C 58, 15.2.2018, p. 9.

<sup>13</sup> OJ C 298, 23.8.2018, p. 39.

European Parliament and of the Council establishing the Asylum and Migration Fund<sup>14</sup>,

- having regard to the European Court of Auditors’ Special Report No 24/2019 of November 2019 entitled ‘Asylum, relocation and return of migrants: time to step up action to address disparities between objectives and results’,
  - having regard to the European Parliamentary Research Service’s (EPRS) Substitute Impact Assessment of March 2019 on the proposed recast Return Directive,
  - having regard to the EPRS’ European Assessment of June 2020 providing an evaluation of the implementation of the Return Directive and of the external dimension of the Return Directive,
  - having regard to the Interinstitutional Agreement of 13 April 2016 between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making<sup>15</sup>,
  - having regard to its resolution of 30 May 2018 on the interpretation and implementation of the Interinstitutional Agreement on Better Law-Making<sup>16</sup>,
  - having regard to Rule 54 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0000/2020),
- A. whereas the Commission has only assessed the implementation of the Return Directive once (in 2014), despite the legal obligation under Article 19 of the directive to report on its application every three years, starting from 2013;
- B. whereas the twofold objective of the directive is effective return in line with fundamental rights and the principle of proportionality; whereas in its recommendation on making returns more effective, the Commission focuses on the rate of returns as the primary indicator of the directive’s effectiveness;
- C. whereas the Commission has noted that Member States face several barriers to effective returns, of a procedural, technical and operational nature, *inter alia* the level of cooperation among all stakeholders involved, including with third countries;
- D. whereas disaggregated and comparable data relating to the implementation of the directive is often not collected or publicly available;

### ***General observations***

1. Deplores the lack of a recent implementation assessment and calls on the Commission to carry out such an assessment, which has been overdue since 2017, as a matter of

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<sup>14</sup> Texts adopted, P8\_TA(2019)0175.

<sup>15</sup> OJ L 123, 12.5.2016, p. 1.

<sup>16</sup> OJ C 76, 9.3.2020, p. 86.

urgency;

2. Reiterates the importance of an evidence-based approach to guide coherent policy-making and well-informed public discourse and calls on the Commission to urge and support Member States to collect and publish qualitative and quantitative data on the implementation of the directive;
3. Stresses that the Commission's statement that the return rate decreased from 46 % in 2016 to 37 % in 2017 may not present the full picture, as people who received a return decision were not necessarily returned within the same year, some Member States issue more than one return decision to one person, or to people whose whereabouts are unknown, and return decisions are not withdrawn if the return does not take place owing to difficulties in cooperation with third countries or for humanitarian reasons;
4. Stresses the importance of improving the effective implementation of the directive; highlights that such effectiveness should not only be measured in quantitative terms by referring to the return rate, but also in qualitative terms, such as the sustainability of returns and fundamental rights;

#### ***Return decisions and voluntary departure***

5. Stresses the importance of ensuring compliance with return decisions and recalls the key principle enshrined in the directive that voluntary returns should be prioritised over forced returns;
6. Highlights that under Article 7 of the directive, a return decision shall provide for an appropriate period for voluntary departure, which Member States have to extend where necessary, taking into account the specific circumstances of the individual case; stresses that a relatively short period for voluntary departure may hinder or altogether prevent voluntary departure;
7. Stresses that a broad definition of the risk of absconding may lead to Member States frequently refraining from granting a period for voluntary departure; recalls that lifting the voluntary departure period also leads to the imposition of an entry ban, which may further undermine voluntary departure;

#### ***Procedural safeguards***

8. Stresses that return and entry-ban decisions on removal should be individualised, clearly justified with reasons in law and in fact, issued in writing, and complete with information about available remedies;
9. Highlights that the directive allows for the temporary suspension of the enforcement of a removal, pending a decision relating to return; underlines the importance of such suspensive effect in cases where there is a risk of refoulement; notes that in most countries, appeal against return is not automatically suspensive, which may diminish protection and increase administrative burdens;
10. Notes with regret the limited use of Article 6(4) of the directive; is concerned about the failure of Member States to issue a temporary residence permit where return has proven not to be possible; underlines the fact that granting residence permits to individuals who

cannot return to their country of origin could help to prevent protracted irregular stays and facilitate individuals' social inclusion and contribution to society;

### ***Entry bans***

11. Notes with concern the widespread automatic imposition of entry bans, which in some Member States are enforced alongside voluntary departure; stresses that this approach risks reducing incentives to comply with a return decision;
12. Stresses that although the threat of imposition of an entry ban may serve as an incentive to leave a country within the time period of voluntary departure, once imposed, entry bans actually reduce the incentive to comply with a return decision and may increase the risk of absconding;
13. Stresses that entry bans have particularly disproportionate consequences for families and children; welcomes the option introduced by some Member States to exempt children from the imposition of an entry ban, but stresses that children's interests should also be a primary consideration when deciding on the entry ban of their parents;

### ***Detention and the risk of absconding***

14. Notes differences in the transposition into national legislations of the definition of the 'risk of absconding' and reiterates that Article 3(7) of the directive provides that the existence of such a risk should always be assessed on the basis of objective criteria defined by law;
15. Is concerned that the legislation of several Member States includes extensive lists of 'objective criteria' for defining the risk of absconding, which are often applied in a more or less automatic way, while individual circumstances are of marginal consideration;
16. Notes that the directive establishes that returnees may lawfully be detained where other less coercive measures cannot be applied; expresses regret that despite the obligation to apply detention as a measure of last resort, in practice, very few viable alternatives to detention are developed and applied by Member States; calls on Member States, as a matter of urgency, to offer viable community-based alternatives to detention;
17. Notes that a significant number of children are still detained in the European Union as part of return procedures, which constitutes a direct violation of the UN Convention on the Rights of the Child, as the UN Committee on the Rights of the Child has clarified that children should never be detained for immigration purposes, and detention can never be justified as in a child's best interests;
18. Calls on Member States to ensure the proper implementation of the directive in all its aspects; calls on the Commission to continue monitoring this implementation and take action in the event of non-compliance;
19. Calls on the Commission to ensure that Member States and Frontex have monitoring bodies in place that are supported by a proper mandate, capacity and competence, a high level of independence and expertise, and transparent procedures; urges the Commission to ensure the establishment of a post-return monitoring mechanism to understand the

fate of returned persons, with particular attention for unaccompanied minors;

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20. Instructs its President to forward this resolution to the Council and the Commission.